



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0962]

RIN 1625-AA00

Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary, moving safety zone for all navigable waters within a 1000-yard radius of the National Aeronautics and Space Administration's (NASA's) crew module uprighting system test article while it is being tested in the territorial waters of the Gulf of Mexico off the coast of Galveston, TX. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards created by vessels and equipment engaged in the crew capsule's at-sea testing. This rulemaking prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Houston-Galveston or a designated representative

DATES: This rule is effective from November 28, 2018 through December 6, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0962 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Collin Sykes, Eighth Coast Guard District, Waterways Management Division, U.S. Coast Guard; telephone 504-671-2119, email Collin.T.Sykes@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Houston-Galveston
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The National Aeronautics and Space Administration's (NASA's) Orion program is evaluating an updated design to the crew module uprighting system (CMUS), the system of five airbags on top of the crew capsule that inflate upon splashdown. NASA tested the CMUS at the Neutral Buoyancy Lab at NASA's Johnson Space Center in Houston, and requested Coast Guard support for the at-sea uprighting tests. On October 19, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX (83 FR 53023). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this at-sea test. During the comment period that ended November 5, 2018, we received 3 comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*.

Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register* because it is contrary to the public interest. The Coast Guard must make this rule effective soon enough to allow for immediate action to respond to the potential safety hazards associated with the at-sea testing and that it does not compromise public safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The at-sea testing of the CMUS will involve numerous surface vessels, divers, and remote-operated submarine vehicles, and feature a rapid rotation of the Orion test article in a confined area and partially controlled environment. The Captain of the Port Sector Houston-Galveston (COTP) has determined that due to the complexity of the test and proximity of the participants, unauthorized access by persons or vessels outside the scope of the test present a significant hazard to human life, vessels, and government property. The purpose of this rule to protect persons, vessels, and the marine environment from potential hazards created by vessels and equipment engaged in the crew capsule's at-sea testing.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 03 comments on our NPRM published October 19, 2018. Two of the comments supported the rule for establishing the described safety measures to protect scientists as they search for solutions to complex problems in potentially hazardous environments.

One comment expressed concerns regarding the impact the safety zone would have on local anglers and requested a more precise location of the test. The planned

location of the test is between 9 and 12 nautical miles (NMs) offshore of Galveston, TX, to the south and west of the Galveston Bay Entrance Channel. However, due to the drifting nature of the test, the Coast Guard cannot provide a specific geographical position at this time. Mariners in the vicinity will be notified of the test location via Broadcast Notices to Mariners (BNMs) no less than 3 hours prior to the commencement of testing. The BNMs, paired with the relatively small area encompassed by the 1000-yd radius safety zone, will provide anglers an ample opportunity to seek alternative fishing grounds during the limited duration test. This same commenter also requested reasons that the NPRM was issued with a 15-day comment period. The Coast Guard published the NPRM with a 15-day comment period because it was impracticable to provide a 30-day comment period. It was impracticable to publish an NPRM with a 30-day comment period because we needed to establish this temporary safety zone by November 28, 2018. A 15-day comment period allowed the Coast Guard to provide for public notice and comment, but also publish a rule, if adopted, soon enough that the length of the notice and comment period does not compromise public safety. Finally, this commenter requested justification for the non-retaliation statement in the Impact on Small Entities section of the NPRM. This statement is required to be included in all Coast Guard Rulemakings by the Coast Guard Non-Retaliation Policy outlined in 69 FR 12864 (March 18, 2004). Based on the public comments received, we have edited the regulatory text to clarify that that the test would occur between 9 and 12 NM offshore of Galveston, TX, to the south and west of the Galveston Bay Entrance Channel. There are no other changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary, moving safety zone that covers all navigable waters within 1000 yards of NASA's CMUS test article, which will be located in the territorial waters of the Gulf of Mexico off the coast of Galveston, TX. NASA anticipates that the testing activities will take place on approximately three days during the effective period, during daylight hours only. The effective period of this rule covers a nine-day window from November 28, 2018 through December 6, 2018, to allow for scheduling delays due to inclement weather or technical difficulties. On each of the approximately three days that the rule will be enforced, the enforcement periods will begin approximately 2 hours before testing activities and last until approximately 2 hours after the testing activities. The COTP or a designated representative will inform the public through BNMs, Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), and/or other means of public notice, as appropriate, at least 3 hours in advance of each enforcement period. Such notice of enforcement will also include more specific information regarding the location of the CMUS test article.

The duration of the zone is intended to protect persons, vessels, and the marine environment on these navigable waters during the NASA testing activities. No vessel or person is permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". Vessels requiring entry into this safety zone must request permission from the COTP or a

designated representative. They may be contacted on VHF-FM Channel 16. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times, dates, and locations, for this safety zone through BNMs, LNM, and/or MSIBs, as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will affect a small, designated area off the coast of Galveston, TX, outside of the Houston Ship Channel and safety fairway during daylight hours on approximately three days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM

marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary, moving safety zone that prohibit entry within 1000 yards of the CMUS test article during daylight hours on approximately nine days in the Gulf of Mexico. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0962 to read as follows:

§ 165.T08-0962 Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX.

(a) Location. The following area is a safety zone: All navigable waters within 1000 yards of the National Aeronautics and Space Administration's (NASA's) crew module uprighting system test article. The test will occur between 9 and 12 nautical miles (NM) offshore of Galveston, TX, to the south and west of the Galveston Bay Entrance Channel.

(b) Effective period. This section will be effective from November 28, 2018 through December 6, 2018.

(c) Enforcement periods. This section will be enforced on approximately 3 days during the effective period, during daylight hours. Each period of enforcement will begin approximately 2 hours before testing activities and end approximately 2 hours after testing activities. The Captain of the Port Sector Houston-Galveston (COTP) or a

designated representative will inform the public of the enforcement through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) or other means of public notice at least 3 hours in advance of the enforcement of this safety zone. Such notice of enforcement will also include more specific information regarding the location of the CMUS test article.

(d) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. A designated representative is a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local officer designated by or assisting the COTP) in the enforcement of the safety zone. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) To seek permission to enter, contact the COTP or a designated representative by VHF Channel 16.

(3) If granted permission to enter, all vessels must transit at their slowest safe speed and comply with all lawful orders or directions of the COTP or a designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) or other means of public notice of the enforcement period for the temporary safety zone as well as any changes in the dates and times of enforcement.

Dated: November 14, 2018

KEVIN D. ODITT,
Captain, U.S. Coast Guard,
Captain of the Port Sector Houston-Galveston.
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